

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
June 12, 2014

Meeting called to order at 6:07 p.m.

Board Members Present: Tom Emerson, Karen Kalmar, Deborah Driscoll Davis, Susan Tuveson, Ann Grinnell

Members absent: Bob Melanson, Mark Alesse

Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes: May 22, 2014

Ms. Kalmar moved to accept the minutes of May 22, 2014 as amended

Ms. Tuveson seconded

Motion carried 4-0

Public Comment: None.

PUBLIC HEARING

ITEM 1 –Work related to Pump Station 21 – Shoreland Development Plan Review.

Action: Hold a public hearing, approve or deny development plan. Owner Town of Kittery and applicant Kittery Wastewater Treatment Department, is requesting consideration of their plan to install a generator and associated concrete pad at a sewer pump station opposite 375 U.S. Route One on town property abutting the right-of-way, Tax Map 47, Lot 24A, Commercial 3 (C-3) Zone and Shoreland Overlay Zone. Agent is George Kathios, Superintendent of Sewer Services.

Mr. Mylroie: This is before the Board as it is in the Shoreland Overlay Zone; this improvement was approved in the recent bond and is an important public safety and environmental protection improvement.

George Kathios: This proposed station covers all service north of the pump station and is needed to insure that services continue uninterrupted due to a power outage to avoid environmental impact should there be a failure and overflow to the creek.

Ms. Tuveson: What is the power source for the generator?

Mr. Kathios: Diesel power; double lined tank to contain spillage.

Ms. Driscoll Davis: Can the station be screened.

Mr. Kathios: There is no one living in that area, but shrubs can be added for screening, if requested.

The Public Hearing opened and closed at 6:14 with no public testimony

Ms. Tuveson moved to approve The Kittery Wastewater Treatment Department's plan to install a generator and associated concrete pad at a sewer pump station (PS 21) opposite 375 U.S. Route One on town property abutting the right-of-way, adjacent to Tax Map 47 Lot 24A, Commercial 3 and Shoreland Overlay Zone, finding the use meets the intent of Title 16.10.10.2.D.

Ms. Kalmar seconded

Motion carried unanimously

ITEM 2 – Shepard's Cove Subdivision – Modification to an Approved Plan – Preliminary Plan Review.

Action: Hold a public hearing, approve or deny preliminary plan. Owner and applicant DLJ Corp., is requesting consideration of their plans to amend the previously approved 2004 subdivision plan, replacing a proposed 24 unit building with detached 5 single-unit buildings at their Elderly Housing Facility located off Rogers Road, Tax Map 22, Lot 21, Residential-Urban Zone and Shoreland Overlay Zone. Agent is Lewis Chamberlain, P.E., Attar Engineering, Inc.

Lew Chamberlain: Summarized the proposed modification to replace a 24-unit building with 5 units, resulting in a reduction in impervious area, sewer and water use, parking and drainage. Infrastructure is already on site; underdrain soil filters will be used to treat water runoff. There were two archaeological sites, with the Pettegrew site located in the area marked for construction. This area was never excavated. DLJ Corp. will hire Emerson Baker to provide archaeological investigation prior to construction.

Earldean Wells: Asked about tree removal. There had been prior tree removal, and the Association was fined for removal. She requests assurance that trees remaining in this area will not be removed following construction.

Ms. Driscoll Davis: Noted abutters along the emergency access road were not included on the abutters list.

Mr. DiMatteo: Abutters lying outside the 150-foot area would not be notified, but if the Board wishes to further notify those property owners another Public Hearing could be held.

Mr. Chamberlain: Abutters were notified within 150 feet as required by code.

Discussion followed as to whether another hearing should be held.

Public Hearing opened at 6:23 p.m.

Scott Moffitt: The emergency access road has been a problem and should be maintained by Shepard's Cove; the road is crumbling and culverts are not included; the road is subject to movement and property is inundated with water due to changes in drainage patterns; easement plans were to include utility stubs. Asking for the Association to maintain the road and take responsibility for negative impacts.

Public Hearing closed at 6:33 p.m.

Ms. Tuveson: Asked about sewer and water connections, lighting, landscaping and level spreaders.

Mr. Chamberlain: Units will be condominiums; town sewer and water is provided; there will be no lighting on the street, only on residences; street trees are not proposed; landscaping on-site to be determined; level spreaders are on all three discharges and will be included on the plan. There will be no changes in condo documents with the new units.

Ms. Kalmar: Show rear and side setbacks on parcel, identify common areas, illustrate location of Pettegrew archaeological site, and provide necessary documentation, requirements and agreements pertaining to this site.

Mr. Chamberlain: The Pettegrew site is off unit 4; the archaeologist observes excavations, and, if anything is found, archaeologist catalogs and reports to the town and Naval Museum. There is no DEP archaeological requirement. The modification to the DEP permit will be provided.

Ms. Driscoll Davis: Asked the tree area to remain in new development be identified; confirm drainage issues; address emergency road maintenance.

Ms. Tuveson noted standards in the Findings that remain to be addressed by the applicant. Discussion followed regarding homeowner's documents, maintenance of the emergency road and financial capability of the applicant.

Discussion followed regarding notifying individuals who may be interested and whether another public hearing is warranted.

Ms. Tuveson moved to grant preliminary plan approval

Ms. Grinnell seconded

Motion carried unanimously

Ms. Tuveson moved to schedule a second public hearing
Ms. Grinnell seconded
Motion carried unanimously

OLD BUSINESS

ITEM 3 – Watts Cluster Subdivision – Brave Boat Harbor Road — Sketch Plan Review

Action: Review and approve concept if in compliance with Town Code and provide direction to Applicant Owner and Applicant Jonathon & Kathleen Watts is requesting consideration of their plans for a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax Map 63, Lot 19, Residential Rural Zone, with a portion in the Shoreland Overlay Zone. Agents are Ken Markley, Easterly Surveying, Inc., and Scott Anderson, Verrill Dana, LLP.

Mr. Mylroie: This review will provide guidance to the applicant as they prepare their preliminary plan application and review the net residential calculations.

Ken Markley: The revised plan more accurately reflects the guidelines of the Soil Suitability Guide; staff recommended lot line changes for lots 3 and 4, allowing a ROW to lot 4 to be located away from the wetland areas; addressed soils series, explaining a series means all soils are not negative, but include soils that allow for septic design within the series.

Ms. Kalmar: Title 16.8.7.1.C states septic cannot be placed in soils rated poor or very poor.

Mr. Markley: Those supportive soils can be identified through mapping. A new Note 11 addresses this issue: *TEST PITS USED FOR SEPTIC AREAS WITHIN THE SHORELAND ZONE ARE INCLUSIONS AND ARE NOT RATED POOR OR VERY POOR. (TURNBRIDGE SOILS).*

Scott Anderson: The change to the lot lines for the ROW preclude a request for a reduction in wetland setbacks.

Ms. Tuveson moved to approve the sketch plan presented for the Watts Cluster Subdivision, Brave Boat Harbor Road, as revised June 11, 2014.

Ms. Driscoll Davis seconded
Motion carried unanimously

Ms. Kalmar moved to approve the minutes of the site walk, as amended
Ms. Tuveson seconded
Motion carried unanimously

ITEM 4 – Pearson Meadow Cluster Subdivision –Final Plan Review.

Action: Review and grant or deny final plan. Owner Gail Beverly Burns and applicant Chinburg Builders, Inc, is requesting consideration of their plans for a cluster subdivision to include nine new lots and one reserved lot on a 24.5 acre parcel located at 60 Wilson Road., Tax Map 54, Lot 14, within the Residential-Rural Zone and Resource Protection Overlay Zone. Agent is Jeff Clifford, P.E., Altus Engineering, Inc.

Ms. Kalmar requested to recuse herself. Chairman Emerson agreed, and reminded the applicant he would need four affirmative votes for final approval.

Mr. Clifford reviewed issues addressed in the May 29, 2014 letter, responding to Board requests:

1. The no-cut buffer along Wilson Road cannot encroach on existing utilities; deeds and easements are being written; the Burns property is encumbered by DEP buffers, but enforcement and responsibility is with the homeowners association; all easements will be included in homeowners documents.
2. Screening along roadway: Met with abutters and some trees will be removed and additional mixed species trees will be incorporated, set back from the curved road area;

3. Common open space: Identified gathering space at grassed soil filtration area south of lot 6, to include benches and plantings, with access from the cul-de-sac and woodland buffer.
4. Wetland mitigation: Wetland impact is 4,208 sf resulting in impact fees totaling \$16,832. With the available upland area, project could accommodate 14 total lots, but the project was kept at 9 new lots, which is a form of mitigation.
5. Road standards: modifications to cul-de-sac pavement and row dimensions have been measured and are acceptable.
6. Septic reserve areas: With more than 24 inches of soil, reserve beds are not required.
7. Homeowners documents were submitted April 3, 2014
8. Financial capability: The contractor would build the road to sell lots without bonding.
Mr. DiMatteo: The ordinance requires a performance guarantee through a bond or escrow. The Town Manager has been contacted, and a draft escrow agreement will be submitted.
9. List of miscellaneous plan revisions for final plan approval.

Earldean Wells: The Findings of Fact does not include the mitigation fee.

Mr. Mylroie: This can be included as a condition of approval.

Mr. DiMatteo: All departments have approved the road name Pearson Place. Planning Board approval is required.

Ms. Tuveson moved to grant final plan approval to the Pearson Meadows Cluster Subdivision.

Ms. Grinnell seconded

Motion carried unanimously

FINDINGS OF FACT

WHEREAS: Owner Gail Beverly Burns and applicant Chinburg Builders, Inc, is requesting consideration of their plan for a cluster subdivision, ten new lots and one reserved lot on a 24.5 acre parcel at 60 Wilson Road., Tax Map 54, Lot 14, Residential-Rural and Resource Protection Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Hereinafter the “Development”.

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:

A. Development Conforms to Local Ordinances.

The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

Vote of 4 in favor 0 against 0 abstaining

B. Freshwater Wetlands Identified.

All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

Vote of 4 in favor 0 against 0 abstaining

C. River, Stream or Brook Identified.

Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in 38 M.R.S. §480-B, Subsection 9.

Vote of 4 in favor 0 against 0 abstaining

D. Water Supply Sufficient.

The proposed development has sufficient water available for the reasonably foreseeable needs of the development.

Vote of 4 in favor 0 against 0 abstaining

E. Municipal Water Supply Available.

The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

Vote of 4 in favor 0 against 0 abstaining

F. Sewage Disposal Adequate.

The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

Vote of 4 in favor 0 against 0 abstaining

G. Municipal Solid Waste Disposal Available.

The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.

Vote of 4 in favor 0 against 0 abstaining

H. Water Body Quality and Shoreline Protected.

Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Vote of 4 in favor 0 against 0 abstaining

I. Groundwater Protected.

The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

Vote of 4 in favor 0 against 0 abstaining

J. Flood Areas Identified and Development Conditioned.

All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.

Vote of 4 in favor 0 against 0 abstaining

K. Stormwater Managed.

Stormwater Managed. The proposed development will provide for adequate stormwater management

Vote of 4 in favor 0 against 0 abstaining

L. Erosion Controlled.

The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

Vote of 4 in favor 0 against 0 abstaining

M. Traffic Managed.

The proposed development will:

1. *Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and*
2. *Provide adequate traffic circulation, both on-site and off-site.*

Vote of 4 in favor 0 against 0 abstaining

N. Water and Air Pollution Minimized.

The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

1. *Elevation of the land above sea level and its relation to the floodplains;*
2. *Nature of soils and sub-soils and their ability to adequately support waste disposal;*
3. *Slope of the land and its effect on effluents;*
4. *Availability of streams for disposal of effluents;*
5. *Applicable state and local health and water resource rules and regulations; and*
6. *Safe transportation, disposal and storage of hazardous materials.*

Vote of 4 in favor 0 against 0 abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Vote of 4 in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

Developer is financially and technically capable to meet the standards of this section.

Vote of 4 in favor 0 against 0 abstaining

WETLAND ALTERATION FINDINGS OF FACT: *A wetlands application has been prepared and submitted to the Town. The application appears to meet the requirements of the ordinance. The applicant makes the case for meeting the requirements of 16.9.3.9 (Mitigation Plan).*

A. *In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed.*

Vote of 4 in favor 0 against 0 abstaining

B. *It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland.*

Vote of 4 in favor 0 against 0 abstaining

C. *In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions.*

Vote of 4 in favor 0 against 0 abstaining

D. *When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and **practicable mitigation plan**, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).*

Vote of 4 in favor 0 against 0 abstaining

E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland.

Vote of 4 in favor 0 against 0 abstaining

F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives: The proposed use will not:

- 1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;*
- 2. Unreasonably increase the flow of surface waters through the wetland;*
- 3. Result in a measurable increase in the discharge of surface waters from the wetland;*
- 4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;*
- 5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;*
- 6. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.*
- 7. Result in a measurable alteration or destruction of a vernal pool.*

Vote of 4 in favor 0 against 0 abstaining

Title 16.8.3.1 - Street Naming Application:

The proposed street name, Pearson Place, has been accepted by Kittery Police, Fire and Public Works departments.

Vote of 4 in favor 0 against 0 abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Final Approval for the Development at the above referenced property, including any waivers/modifications granted or conditions as noted.

Waivers: The following waivers were granted May 8, 2014:

1. 16.8.5.1.3 (a & b) Roadway plan and profile drawing scale.
2. 16.8.11.6.G Cluster subdivision access onto a public road.
3. 16.8.11.6.I.5 Disturbance within 100-foot wetland buffer.

Dimensional Standards Modifications (per Article XI Clustered Residential Development, 16.8.11.3)
(Standard A, Findings of Fact):

Conditions of Approval (to be included on the recorded final plan):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. All Notices/Instructions to Applicant contained in the Findings of Fact.

Conditions (Not to be included on the final plan)

5. Prior to start of any site development/construction, applicant shall pay wetland mitigation fees of \$16,832.
6. Drafts of all easements must be provided for staff review prior to signing of final plan.

Notices/Instructions to Applicant:

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and two (2) paper copies of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. The owner and/or developer, in an amount and form acceptable to the Town Manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including infrastructure construction inspection fees.
5. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

The Planning Board authorizes the Planning Board Chairman sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 4 in favor 0 against 0 abstaining

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

Break

ITEM 5 – Old Armory Way Mixed Use Development — Sketch Plan Review

Action: Review and approve concept if in compliance with Town Code and provide direction to Applicant Owner and Applicant Ken McDavitt is requesting consideration for plans to construct a 3-unit residential condominium with 12 commercial boat slips at the shorefront located at 15 Old Armory Way, Tax Map 4, Lot 51, and within the Mixed Use Kittery Foreside Zone and the Shoreland and Commercial Fisheries/Maritime Activities Overlay Zones. Agent is Edward Brake, Attar Engineering, Inc., Eliot, Maine.

Ken McDavitt: There will be parking spaces for the 3 condominium units, with 4 interior parking spaces under the units and one exterior space. Following, engineering review he will provide access point from parking to boat slips following further engineering.

Discussion followed on parking for residences and slip users and whether there is sufficient parking for the proposed use.

Ms. Driscoll Davis: Concerned about narrowness of Old Armory Way; though he may meet ordinance standards for parking, believes parking may occur on Old Armory Way, creating problems for emergency vehicles.

Mr. McDavitt: There are 12 boat slips proposed, requiring 1 space per slip. As a commercial use, the first 3 parking spaces required are exempt, leaving 9 spaces. Two slips are reserved for condominium owners, with those required parking spaces within the residential units. There are 10 commercial slips and 7 parking spaces for their use.

Ms. Grinnell: It seems you're taking extra credit with parking standards. What if the condominium does not own a boat and leases their slip space, or wish to use their interior parking area for storage?

Mr. DiMatteo: The ROW needs to be clearly marked and identified.

Mr. Emerson: The Board will need to review the Condominium documents.

Mr. McDavitt: I will retain one condominium and run the marine business. Power and water will be provided to the slips.

Earldean Wells: The Conservation Commission is concerned about parking area runoff, snow storage, and overnight and guest parking; stormwater management plan is needed.

Ms. Davis: Will the slips be used year round?

Mr. McDavitt: Unless it is precluded in the documents, but he does not intend for them to be used year round, and does not anticipate all the slips will be used at one time.

Discussion followed regarding KPA review of the project.

Ms. Tuveson moved to approve the sketch plan for the Old Armory Way mixed-use development.

Ms. Kalmar seconded

Ms. Grinnell: So we are only approving the concept.

Ms. Kalmar: This application will need Kittery Foreside Committee and KPA review

Mr. McDavitt: Hopes to provide architectural designs after preliminary review, but before final review.

Mr. Emerson: Parking is still an open issue; the number of boat slips may have to be reduced.

Mr. DiMatteo: The Board cannot give preliminary approval without some architectural sketches.

Discussion followed regarding the Foreside Committee.

Motion carried unanimously

Review of site walk minutes was deferred.

ITEM 6 – Board Member Items / Discussion

Mr. Emerson: Foreside Meeting on June 16 2014 at 7:00 p.m.

Signage ordinance amendments will be on next Board agenda.

Ms. Grinnell was excused at 8:33 p.m.

ITEM 7 – Town Planner Items:

A. MS4 Stormwater Questionnaire: Appears there is no response area for Planning Board input.

B. Town Code Quality Improvement Overlay Zone: Meeting scheduled for Friday, June 20 at 8:00 a.m. Conference Room A. Ms. Kalmar requested participation.

C. Memorial Circle Plan – On-going; development of improvement cost estimates.

D. Kittery Foreside meeting: June 16 at 7:00.

E. Signs - Compliance issues, character and appearance, etc. to be discussed at next meeting.

F. FEMA – Flood Insurance Risk Maps Status; Council is still deciding upon funding the appeal process.

G. Capital Improvement Program Projects; Possible bonding; Board should discuss areas for consideration.

H. Town Code Outdoor Seating Program Extension; Consider expanding to other business zones.

I. Other:

- Branding of Kittery: Does the Board want to continue to exercise role in identify and branding business districts for recommendation to Council. Mr. Emerson: Our involvement is necessary. The Board just did not endorse the Gateway name itself, as this is ultimately the Council's role. If those individuals within a district wish to promote themselves the Board will listen, but it needs to be initiated by them. Ms. Tuveson: Why do we need to brand every inch of Kittery?

- Kittery Outlet Center: Addition of gables and cupolas [inaudible].
- Councilman Thompson requested a list of pending ordinance amendments for October target date.

NEW BUSINESS

[this item was reviewed out of sequence]

ITEM 8 – Knutel/56 Chauncey Creek Rd – Modification to an Approved Plan - Shoreland Development Review

Action: Accept or deny plan application and schedule site walk and/or public hearing. Owner and applicant Philip Knutel is requesting approval of their plans to expand an existing non-conforming building located on Chauncey Creek Rd., Tax Map 44, Lot 55, in the Kittery Point Village and Shoreland Overlay zones. Agent is Architect Tom Emerson, Studio B-E.

Chairman Emerson recused himself.

Ms. Tuveson summarized the request, noting this is not an expansion, but a modification of a previously approved expansion.

Mr. Emerson: The brick stoop is being removed for ease of access, to be replaced by a 7' x 3' stoop and a 3-foot wide step, further back from road, and creates less impervious surface.

Ms. Kalmar moved to approve modification to the previously approved Shoreland Development Plan for Philip Knutel at 56 Chauncey Creek Road, Map 44 Lot 55, concluding the proposed improvements related to the front porch, associated steps and roof canopy meet all applicable standards including Title 16.10.140.2.D, and authorize the Vice-Chair to sign the amended Findings of Fact and revised development plan to be recorded at the York County Registry of Deeds.

Ms. Grinnell seconded

Ms. Tuveson: Is the Board comfortable approving this project without a site walk or public hearing?

Members agreed they were.

Motion carried unanimously

ITEM 9 – Beatrice Way –Subdivision– Sketch Plan Review

Action: Review and approve concept if in compliance with Town Code and provide direction to Applicant Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

Mr. Markley: Taking Board and staff comments under consideration, the applicant is now requesting this application be reviewed as a conventional subdivision instead of a cluster subdivision.

Mr. Mylroie: Summarized how the applicant can meet his needs through a cluster subdivision application, without actually developing a cluster subdivision, but applying cluster standards to determine net residential acreage, open and common space, etc. [stepped away from microphone; inaudible]

Ms. Driscoll Davis: Uncomfortable with trying to predict what will be done in the future.

Ms. Tuveson: What is feasible in the future is not at issue before the Board now.

Ms. Kalmar: Title 16.8.16.6 allows the Board to require potential division of lots be shown.

Mr. Emerson: We need to determine if the existing lots belong with this proposed subdivision when determining net acreage for development.

Mr. Markley: This would be unfair; the applicant had originally come before the Board with a ROW application to divide the property, and were told to change to the current application before the Board. Now you're asking to include the existing duplex lots as part of a cluster application.

Mr. DiMatteo: This meets subdivision requirements as three lots are being created within a 5 year period.

Mr. Sparkowich: Referenced May 22, 2014 letter regarding inappropriateness of cluster subdivision provisions for the project. He summarized:

1. Clustering homes in the only developable area would require a road 2,000-3,000 feet long, with accompanying utilities, sidewalks, etc. which is not feasible;
2. The proposed cul-de-sac provides access to an easement to reach the large parcel and upland area for a single home;
3. Frontage for the proposed lots and existing subdivision has been provided.

Mr. Emerson: Is there a provision in the code for a simple lot division? Is there a provision for the Board to approve as a conventional subdivision?

Ms. Driscoll Davis: Does the Board have authority to restrict use of the easement beyond the proposed single home on the large lot? Does the owner of the easement lot have the right to know how the easement will be used?

Mr. Emerson: Yes the owner would, but that would be addressed in the future should there ever be any additional development on the large parcel.

Ms. Kalmar: If you force a cluster on this large parcel, the resources are impacted. If we review as proposed, the housing is where we want it and it meets the code now, and could be justified as a special exception. Item O in standards for subdivision review addresses the natural values and resources.

Mr. DiMatteo: Cluster development will preserve open space, but a conventional subdivision could provide conditions for preservation of the resource. Just because someone owns the property does not necessarily meet the goal of protecting the natural habitat.

Mr. Emerson: If we require a cluster subdivision it forces development into this habitat.

Mr. Mylroie: The intent is not to force a cluster, but to determine the maximum development allowed for future consideration, for instance setting 50% aside for open space.

Ms. Tuveson: Not sure it is fair to impose this upon the applicant. Agrees with Ms. Kalmar.

Mr. Emerson: Likes the way the land is parceled at this time. If there is to be additional development, they will have to deal with that in the future.

Mr. Markley: Requests Board intent to grant special exception so they can proceed.

Mr. Sparkowich: Met with individuals regarding the gate and no one wants one.

Ms. Kalmar moved to grant approval of the sketch plan for Operation Blessing LP and direct the applicant to address the comments raised and to submit a special exception request with their preliminary plan application.

Ms. Driscoll Davis seconded

Motion carried unanimously

Mr. Emerson: This is a paper cul-de-sac, as a hammerhead will be designed.

Mr. Markley: Correct. Additional changes requested:

1. Access to back lot shown;
2. Setbacks shown;
3. Emergency access road to cul-de-sac for existing units;
4. Buffering to neighboring parcels;
5. Building envelopes and open space.

Ms. Tuveson moved to adjourn

Mr. Emerson seconded

Motion carried by all members present

The Kittery Planning Board meeting of June 12, 2014 adjourned at 9:35 p.m.
Submitted by Jan Fisk, Recorder, June 17, 2014